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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/790,936

03/01/2004

Charles John Call

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07/17/2008

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EXAMINER

ALEXANDER, LYLE

ART UNIT

PAPER NUMBER

1797

MAIL DATE

DELIVERY MODE

07/17/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/790,936	Applicant(s) CALL ET AL.	
	Examiner Lyle A. Alexander	Art Unit 1797	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 May 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 27-62 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 27-62 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>9/5/06;9/15/06;12/19/06</u> . | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. **Claims 27-28, 32-33, 35-40, 42, 44-57, 59 and 61-62** are rejected under 35 U.S.C. 102(b) as being anticipated by Danylewych-May et al. (USP 5,859,375).

Danylewych-May discloses an air sensor device configured to collect airborne particles and to evaluate collected airborne particles in order to determine if the collected airborne particles indicate the presence of a biological threat. Column 6 lines 1-21 teach substrate(45) has a work portion(46) that collects the sample and have been read on the claimed “impact plate” and “planar collection surface” respectively. Additionally, handle(12) positions the working portion(46) of the substrate for analysis and has been read on the claimed “homing sensor.” Column 6 lines 50-55 teach cleaning substrate(45) so that it may be reused and has been read on the claimed “surface regenerator.” Column 7 lines 51-63 drawing air through a filter material to trap potential analytes for subsequent analysis and has been read on the claimed “spotting nozzle”. The taught IMS analyzer has been read on the claimed MS and Raman spectrometer of claims 32-33. A plurality of substrates(45) in column 6 lines 54-55 that has been read on the plurality of collection surfaces of claim 35. The conduit supplying the air drawn through the filter material has been read on the claimed particle concentrator of claim 35 (e.g. the particles will be concentrated from the ambient air in the conduit) and the claimed “size selective inlet” of claim 36 (e.g. the conduit will be selective for a certain size). The limitations of

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claim 38 have been read on the structures of figures 1-3. The limitations of claim 42 “felt pad” are sufficiently broad that they have been properly read on the taught substrate(45).

The limitations of claim 43 “... means for translocating the collection surface ...” have been read on the handle(12) that moves the substrate(45). The remainder of the claims are substantially parallel to the above claims and have been rejected similarly for the same reasons.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 29-31, 41 and 58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Danylewych-May et al.

See Danylewych-May et al. *supra*.

Danylewych-May et al. are silent to the claimed inclusion of only particle sizes 1-10 microns, using a fluorescence detector and using an infrared absorbance detector.

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The court decided *In re Rose*, 220 F.2d 459, 105 USPQ 237 (CCPA 1955) that "... limitations relating to the size of the package were not sufficient to patentably distinguish over the prior art..." Further, it would have been desirable to detect small when screening for contraband, such as 1-10 microns, to insure that minute amounts are detected. It would have been within the skill of the art to modify *Danylewych-May et al.* and select a filter that would only trap particles in the 1-10 micron range to gain the above advantages and because limitations relating to size are not sufficient to distinguish over the prior art.

The court decided *In re Boesch* (205 USPQ 215) that optimization of a result effective variable is ordinarily within the skill of the art. A result effective variable is one that has well known and predictable results. The type of analysis is a result effective variable having the well known and expected results of detecting the analyte of interest. Both fluorescence and infrared absorbance detectors are well known in the art and are less expensive than the taught IMS detector. It would have been within the skill of the art to modify *Danylewych-May et al.* and use either a fluorescence or an infrared absorbance detector as optimization of a result effective variable to achieve the well known and expected results of analyte resolution.

Claims 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Danylewych-May et al.* in view of *Beverly et al.* (USP 4,742,009).

See *Danylewych-May et al. supra*.

Danylewych-May et al. are silent to the use of a wheel with a rotating shaft to move the collection surface.

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Beverly et al. teach a method and apparatus that monitors gas samples for hazardous materials. The method and apparatus using a filter material on a roll(32) that is continuously conveyed to sampling head(30) where the gas impinges the filter material. The filter material is continuously conveyed to a detector(40) to determine if the hazardous material is present. If the material is detected an alarm will sound. It is desirable to continuously sample the air for the hazardous material, because it is not certain when the hazard material will be present.

The claimed "... surface regenerator is a felt wheel" has been read on the taught roll(32) of filter material. It would have been within the skill of the art to modify Danylewych-May et al. in view of Beverly et al. (USP 4,742,009) and use a roll of filter material to continuously monitor for hazardous materials.

Response to Arguments

Applicant's arguments with respect to claims **27-62** have been considered but are moot in view of the new ground(s) of rejection.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lyle A. Alexander whose telephone number is 571-272-1254. The examiner can normally be reached on Monday, Tuesday and Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Lyle A Alexander
Primary Examiner
Art Unit 1797

/Lyle A Alexander/
Primary Examiner, Art Unit 1797